LOKMANAAL HAKIM RAMLI & ORS.

v.

HJ. ISMAIL ISHAK & ORS.

HIGH COURT MALAYA, ALOR SETAR
K. C. VOHRAH J
[CIVIL SUIT NO. 25-159-1987]
26 MARCH 1992

CIVIL PROCEDURE: *Further issue - Whether collector failed to appoint guardian for the minor beneficiary - Whether failure to carry out statutory duty under the act avenue for redress - Whether to appeal to High Court ss. 10(1), 15(2).*

CIVIL PROCEDURE: *Jurisdiction - Small estates order of distribution - Whether order made wrongly - Whether collector had not considered a letter of renunciation - Declaration sought to confirm of defendants had renounced their share in the said property.*

STATUTORY INTERPRETATION: *Jurisdiction - Whether High Court has original or appellate jurisdiction - Whether ss. 21(1) shall be read in the context of s. 4(11) of the Act - Small Estates & Distribution Act 1955 (Act 98).*

On 22 February 1987 the Collector of Land Revenue Kubang Pasu acting under s. 13 of the Small Estates. Distribution Act 1955 (Act 98) (The Act) made an order distributing the property to all the plaintiff and all the defendants in proportionate shares in accordance with Muslim law.

In other words all 3 defendants, being children of the deceased were given their share of the property. The other son, Ramli having died before the order of distribution, his shares was given to his wife and all his children, the plaintiff in this case.

There were two issues before the Court.

The preliminary objection raised by the defendants was that the High Court has no jurisdiction to deal with the case. It was averred that under s. 4(2) of the said act it is the Collector who in matters relating to the distribution of small estates; and that the High Court has no original jurisdiction in such matters and only has appellate jurisdiction in respect of an appeal under s. 29 of the Act against an order, decision or act done or made by the Collector.

The second contention which was raised by the plaintiffs was that the High Court has jurisdiction because the Collector did not decide on the issue of whether the defendants had renounced their share in the estate of the deceased.

This said contention was seen as a collateral issue by the learned Judge that is whether the defendants were beneficially entitled to a share of the property of the deceased which was not resolved by the Collector.

Held:

[1] It is clear that the matter raised for trial relates to the distribution of a small estate. The specific complaint in this regard is that the collector failed to consider the collateral dispute of whether the defendants are entitled to a share of the property of the deceased.

[2] But the Collector under s. 4 of the Act must take cognizance of such a matter and there are procedures spelt therein for him to decide on the matter or for him to direct the claimants to institute proceedings in the High Court within a certain time frame.

[3] The procedure also provides that if the claimants fail to do that, the Collector is under a duty to proceed and determine the dispute more importantly s. 14(9) specifically provides that any order made under s. 14 is appealable under s. 29 of the Act.

[4] The learned Judge reviewed the appeal provision in the Act, s. 29(1), and stated that it be read in the context of s. 4(1) of the Act. Both these provisions are discussed in *Fathimah.* The High Court's jurisdiction to set aside a distribution order as stated is clearly provided by s. 29 of the Act. The jurisdiction is appellate and not original.

[5] The plaintiff in this case are indeed applying, *inter alia*, for a declaration that the defendants had renounced their beneficial share in the property of deceased Ishak and for a consequential order to set aside the collector's order of distribution.

[6] However all the plaintiffs being aggrieved parties within the meaning of s. 29(1) of the Act. They had a right of appeal and they should have appealed under s. 29(1) and the remedy of declaration is not open to them. In the circumstances this Court cannot entertain the civil suit.

[Plaintiffs claim dismissed with costs.]

Cases referred to:
Fathimah binti Mat Akir & Anor. v. Sharifah binti Hj Ahmad & Ors. [1977] 1 MLJ 106 ***(foll)***
Development and Commercial Bank Bhd. v. Land Administrator, Wilayah Persekutuan [1991] 2 MLJ 181 ***(dist)***

Legislation referred to:
Small Estates (Distribution) Act 1955 ss. 4(2), 10(1), 13, 14(9), 15(2), 29(1)

For the plaintiffs - George John; M/s. George John & Co.
For the defendants - Zainal Rashid; M/s. Ahmad Farid & Associates

JUDGMENT

KC Vohrah J:

When Ishak bin Mat on 18 April 1981 died he left a piece of property comprised in SPK 8089, Lot 2132, Mukim Naga, Daerah Kubang Pasu, Kedah.

He also left 4 children, 3 of whom are the 1st to 3rd defendants in this case.

The other was Ramli bin Ishak who has since died and Ramli bin Ishak had a wife, the 2nd plaintiff, and 7 children, the 1st, 3rd and 4th plaintiff and 4 others, all minors, represented by their next friend, the 5th plaintiff.

On 22 February 1987 the Collector of Land Revenue, Kubang Pasu, acting under s. 13 of the Small Estates Distribution Act 1955 (Act 98) (the Act) made an order distributing the property to all the plaintiffs and all the defendants in proportionate shares in accordance with Muslim law. In other words all 3 defendants, being children of the deceased were given their share of the property. The other son, Ramli, having died before the order of distribution, his share was given to his wife and all his children, the plaintiffs in this case.

The main complaint of all the plaintiffs is that the order of distribution was wrongly made and at para. 15(ii) of their statement of claim they pray that it be set aside. They say that the Collector had not considered a letter of renunciation dated 13 January 1979 made by the defendants in which the defendants renounced their share in the said property and the plaintiffs request in para. 15(i) for a declaration that the defendants had renounced their share in the said property.

The 1st and 3rd defendants (the 2nd defendant did not file her defence) in their defence deny that they made the letter of renunciation; they allege that Ramli induced them to sign a blank sheet of paper for a "surat kuasa" and that as soon as they knew of the letter of renunciation and of the intention to use the letter at the proceedings for the distribution of the estate, they immediately wrote to the Land Administrator to "withdraw the same".

At the hearing of the suit before me the 1st and 3rd defendants raised a preliminary objection. Their contention is that the High Court has no jurisdiction to deal with the case; they say that under s. 4(2) of the Act it is the Collector who exclusively has original jurisdiction in matters relating to the distribution of small estates; the High Court has no original jurisdiction in such matters; the High Court only has appellate jurisdiction in respect of an appeal under s. 29 of the Act against an order, decision or act done or made by the Collector. They rely on *Fathimah binti Mat Akir & Anor v. Sharifah binti Hj Ahmad & Ors.* [1977] 1 MLJ 106 to support their contention.

On the other hand the plaintiffs say that the High Court has jurisdiction because the Collector did not decide on the issue of whether the defendants had renounced their share in the estate of the deceased. I think what they mean to say is that there was a collateral dispute whether the defendants were beneficially entitled to a share of the property of the deceased which was not resolved; that the Collector ignored the collateral dispute which was before him and made the distribution order allowing the 3 defendants to share in the property together with the plaintiffs. They also say, but this was not pleaded, that when the order was made 4 out of the 7 children (represented in this suit by the 5th plaintiff) of Ramli (who had by then died) were minors and that the Collector did not appoint a guardian for them as is required under s. 10(1) of the Act.

From the nature of the statement of claim and the defence it is clear that the matter raised for trial relates to the distribution of a small estate. The specific complaint in this regard is that the Collector failed to consider the collateral dispute of whether the defendants are entitled to a share of the property of the deceased. But the Collector under s. 14 of the Act must take cognizance of such a matter and there are procedures spelt therein for him to decide on the matter or for him to direct the claimants to institute proceedings in the High Court within a certain time frame. The procedure also provides that if the claimants fail to do that the Collector is under a duty to proceed and determine the dispute. More importantly s. 14(9) specifically provides that any order made under s. 14 is appealable under s. 29 of the Act. I have gone through Part I of the Agreed Bundle. I notice that there was an order made by the Collector under the said s. 14 (see p. 2, Part I of Agreed Bundle) where it is written, *inter alia*, thus:

> Pemegang Surat Kuasa Pentadbiran telah meninggal dunia dan waris-waris tidak mengemukakan tuntutan mereka di Mahkamah Tinggi dalam tempoh yang ditentukan.
>
> Pembahagian di Bahagikan kepada semua waris - waris menurut Hukum Syarak Faraid.

("The administrator has died and the beneficiaries did not institute proceedings in the High Court within the time limited for instituting the proceedings. Distribution of the property to all beneficiaries in accordance with Hukum Syarak Faraid.")

Although no reference is made to this order in the statement of claim it is clear that the complaint of the plaintiffs must also relate to this order made by the Collector under s. 14 not merely to the distribution order made by him under s. 13. And in respect of the order made under s. 14 the plaintiffs clearly should have appealed against such order to the High Court under s. 29 as specifically enjoined under s. 14(9).

I come to the other issue which was raised in argument although, as earlier observed, this does not appear in the statement of claim - that the Collector did not appoint a guardian for the minor beneficiaries in the case. Even if it is true that the Collector did fail to appoint a guardian for the minor beneficiaries it amounts to a complaint that the Collector failed to carry out a statutory duty under the Act (assuming one can read into s. 10(1), bearing in mind s. 15(2), such a duty) when he made the distribution order after he had conducted the enquiry into the petition for distribution. Again the avenue for redress is through an appeal to the High Court.

I now come to the relevant appeal provision in the Act s. 29(1).

Section 29(1) of the Act reads:

> 29.(1) Subject to the other provisions of this Act and to subsection (5) any person aggrieved by any order, decision or act made or done by a Collector may appeal to the High Court ...

The reference to "the other provisions of this Act" and "subsection (5)" in the above subsection is not relevant in the instant case.

Section 29(1) has, however, to be read in the context of s. 4(1) of the Act. Both these provisions are discussed in *Fathimah.*

In *Fathimah,* a settlement officer made a distribution order under the Small Estates (Distribution) Ordinance 1955 (as the Act then was known before revision in 1972) for the distribution of the estate of one Akil bin Lebai Mat who had a quarter share in a piece of land. According to the record of proceedings of the settlement officer, all the beneficiaries of the estate present agreed to the distribution. Subsequently it was alleged that one of the widows was of unsound mind. Her daughters applied to the High Court to set aside or vary the settlement officer's order and for a declaration that a half - share of the deceased's interest in the said land be transferred to this widow as 'sharikat' property. The trial Judge dismissed the application.

On appeal the Federal Court held that the High Court had no jurisdiction to entertain the suit. Suffian LP at p. 106 said:

> The issue in this case is whether or not the High Court has jurisdiction to entertain the suit.
>
> The suit is an attempt to get an order whereby an interest in Akil's estate should devolve or vest in his beneficiaries. Normally the High Court would have jurisdiction to entertain it. But this suit relates to a small estate and the legislature has expressly provided by s. 4(1) of the Small Estates Distribution Ordinance that it is not the High Court, but the Collector who **exclusively** has original jurisdiction.

Ali FJ at p. 107 had this to say:

> The High Court's jurisdiction to set aside a distribution order as stated is clearly provided by s. 29 of the Act. The jurisdiction is appellate and not original.
>
> Quite clearly I think the only way to have the order set aside was to appeal under s. 29 of the Act.

In this case the matters complained of relate to a small estate which under the Act are within the exclusive original jurisdiction of the Collector; the plaintiffs should under s. 29(1) of the Act have appealed against both orders of the Collector made on 22 February 1987, the order made under s. 13 relating to the distribution of the property and the other order made under s. 14 relating to the collateral dispute.

I am not unmindful of the Supreme Court case of *Development and Commercial Bank Bhd. v. Land Administrator, Wilayah Persekutuan* [1991] 2 MLJ 181 on the availability of the remedy of declaration, under certain circumstances, to a person where he has no alternative remedy available to him to redress a grievance he has against a decision or order of an authority constituted under a statute. The plaintiffs in this case are indeed applying, *inter alia*, for a declaration that the defendants had renounced their beneficial share in the property of deceased Ishak and for a consequential order to set aside the Collector's order of distribution. However, all the plaintiffs being aggrieved parties within the meaning of s. 29(1) of the Act they had a right of appeal and they should have appealed under s. 29(1) and the remedy of declaration is not open to them.

In the circumstances I uphold the preliminary objection of the defendants that this Court cannot entertain the civil suit, and I dismiss the plaintiffs' claim with costs.

Also found at [1992] 2 CLJ 1031